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TITLE 15

NATURAL RESOURCES AND ECONOMIC DEVELOPMENT

(CHAPTERS 1-39 IN VOLUME 13A)

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CHAPTER 41

ADMINISTRATION AND ENFORCEMENT OF WILDLIFE REGULATIONS

SUBCHAPTER.

- 1. ARKANSAS STATE GAME AND FISH COMMISSION.

SUBCHAPTER 1 — ARKANSAS STATE GAME AND FISH COMMISSION

SECTION.

15-41-118. Agreements to hold and save

United States free from
damages.

Effective Dates. Acts 2010, No. 162, § 9: July 1, 2010. Emergency clause provided: "It is found and determined by the General Assembly, that the Constitution of the State of Arkansas prohibits the appropriation of funds for more than a one (1) year period; that the effectiveness of

this Act on July 1, 2010 is essential to the operation of the agency for which the appropriations in this Act are provided, and that in the event of an extension of the legislative session, the delay in the effective date of this Act beyond July 1, 2010 could work irreparable harm upon

the proper administration and provision of essential governmental programs. Therefore, an emergency is hereby declared to exist and this Act being neces-

sary for the immediate preservation of the public peace, health and safety shall be in full force and effect from and after July 1, 2010."

15-41-115. Rewards.

A.C.R.C. Notes. Acts 2010, No. 162, § 5, provided: "PAYMENT OF REWARDS. Payment of rewards shall be from the Game Protection Fund from the Commission's Maintenance and General Operation appropriation as herein appropriated in Section 3, Item No. (05)(A).

"The provisions of this section shall be in effect only from July 1, 2010 through June 30, 2011."

Acts 2011, No. 913, § 5, provided: "PAYMENT OF REWARDS. Payment of rewards shall be from the Game Protection Fund from the Commission's Maintenance and General Operation appropriation as herein appropriated in Section 3, Item No. (05)(A).

"The provisions of this section shall be in effect only from July 1, 2011 through June 30, 2012."

15-41-118. Agreements to hold and save United States free from damages.

(a)(1) Except as provided in subdivision (a)(2) of this section, the Arkansas State Game and Fish Commission is authorized to agree to hold and save the United States free from damages due to the design, construction, operation, maintenance, repair, replacement, or rehabilitation of:

(A) Projects for water resource development, wildlife conservation, or other purposes; and

(B) Any state-sponsored or locally sponsored project-related betterments.

(2) Subdivision (a)(1) of this section shall not apply to damages due to the fault or negligence of the United States or its contractors.

(b) Subsection (a) of this section does not:

(1) Obligate the General Assembly to provide future appropriations; or

(2) Abrogate the provisions of Arkansas Constitution, Article 5, § 29.

History. Acts 2010, No. 162, § 7.

CHAPTER 42 LICENSES

SUBCHAPTER.

1. GENERAL PROVISIONS.

SUBCHAPTER 1 — GENERAL PROVISIONS

SECTION.

15-42-104. Hunting and fishing licenses

for residents — Special fees.

15-42-104. Hunting and fishing licenses for residents — Special fees.

(a)(1) The maximum fee for the annual resident basic hunting license for any resident of the State of Arkansas who is sixteen (16) years of age or older for the privilege of taking small game and the taking of one (1) deer by the use of a modern center-fire firearm shall be as provided by the regulations and within the bag limits promulgated by the Arkansas State Game and Fish Commission but shall not exceed eleven dollars and fifty cents (\$11.50) each until July 1, 1997, when the maximum fee shall revert to ten dollars and fifty cents (\$10.50).

(2) The maximum fee for the annual resident sportsman hunting license for any resident of the State of Arkansas who is sixteen (16) years of age or older for the privilege of taking three (3) deer and all other game by any method of taking shall be as provided by the regulations and within the bag limits promulgated by the commission but shall not exceed twenty-six dollars (\$26.00) each until July 1, 1997, when the maximum fee shall revert to twenty-five dollars (\$25.00) each.

(3) In addition to the annual resident basic and sportsman hunting license fees authorized in this subsection, the commission by regulation may provide that any resident of this state who is sixteen (16) years of age or older be required:

(A) For the privilege of hunting migratory birds in this state, to obtain a special permit and pay a special annual fee not to exceed seven dollars (\$7.00) each;

(B) For the privilege of taking a bonus deer in addition to the deer authorized with the basic hunting license and the sportsman hunting license, to obtain a special permit and pay a special fee not to exceed ten dollars (\$10.00) each; and

(C) For the privilege of hunting elk in this state, to obtain a special permit and pay a special annual fee not to exceed thirty-five dollars (\$35.00) each.

(4) Nothing contained herein is intended to restrict the authority of the commission to charge any resident of the state an additional fee solely for the purpose of entering upon and hunting upon any land owned or leased by the commission.

(b)(1) The maximum fee for the annual resident fishing license for any resident of the State of Arkansas who is sixteen (16) years of age or older shall be as provided by the regulations promulgated by the commission but shall not exceed eleven dollars and fifty cents (\$11.50) each until July 1, 1997, when the maximum fee shall revert to ten dollars and fifty cents (\$10.50) each.

(2) In addition to the annual resident fishing license fee authorized in this subsection, the commission by regulation may provide that any resident of this state sixteen (16) years of age or older be required for the privilege of fishing for trout in this state to obtain a special permit and pay a special annual fee not to exceed five dollars (\$5.00).

(3) In lieu of the annual resident fishing license fee authorized in this subsection, the commission by regulation may provide that any resi-

dent of this state sixteen (16) years of age or older be authorized to purchase a three-day-trip fishing license for a fee not to exceed seven dollars and fifty cents (\$7.50) each until July 1, 1997, when the maximum fee shall revert to six dollars and fifty cents (\$6.50) each.

(c) The maximum fee for the annual resident combination sportsman hunting and fishing license for any resident of the State of Arkansas who is sixteen (16) years of age or older for all hunting and fishing privileges except those covered by the migratory bird and trout permits shall be as provided by the regulations and within the bag limits as promulgated by the commission but shall not exceed thirty-seven dollars and fifty cents (\$37.50) each until July 1, 1997, when the maximum fee shall revert to thirty-five dollars and fifty cents (\$35.50).

(d)(1) The commission:

(A) Shall provide for the issuance of a lifetime hunting and fishing license, with an optional lifetime trout stamp and lifetime state duck stamp, to a resident of this state who is:

(i) Sixty-five (65) years of age or older for a one-time fee of thirty-five dollars and fifty cents (\$35.50);

(ii) A totally disabled military veteran for a one-time fee of thirty-five dollars and fifty cents (\$35.50);

(iii) Any age for a one-time fee of one thousand dollars (\$1,000); or

(iv) Sixty (60) years of age or older who is a regular or nonregular retiree of the armed services of the United States for a one-time fee of thirty-five dollars and fifty cents (\$35.50); and

(B) May provide for the issuance of a lifetime hunting-only license or a lifetime fishing-only license for a fee that shall not exceed the fee that the resident would be charged otherwise for the issuance of a lifetime license under subdivision (d)(1)(A) of this section.

(2) The commission shall offer a resident issued a lifetime hunting and fishing license under subdivision (d)(1)(A) of this section or a hunting-only license or a fishing-only license under subdivision (d)(1)(B) of this section:

(A) A lifetime trout stamp for a one-time fee of five dollars (\$5.00);

(B) A lifetime state duck stamp for a one-time fee of seven dollars (\$7.00); or

(C) Both a lifetime trout stamp and a lifetime state duck stamp for a one-time fee of twelve dollars (\$12.00).

(3) The commission:

(A) Shall provide for the issuance of a three-year disabled hunting and fishing license to a resident of this state who is totally disabled for a fee of thirty-five dollars and fifty cents (\$35.50); and

(B) May provide for the issuance of a hunting-only license or a fishing-only license to a resident of this state who is totally disabled for a fee that shall not exceed thirty-five dollars and fifty cents (\$35.50).

(e) For this section, the commission may promulgate rules that:

(1) Define "military veteran", "resident", and "totally disabled"; and

(2) Govern the sale and use of each license, permit, or stamp issued under this section.

History. Acts 1987, No. 910, §§ 1-4; 1987, § 1; 2003, No. 428, § 1; 2009, No. 1987, No. 939, § 18; 1987 (1st Ex. Sess.), 623, § 1; 2011, No. 302, § 1.
Amendments. The 2011 amendment added (d)(1)(A)(iv).

15-42-107. Nonresident fishing license generally.

RESEARCH REFERENCES

ALR. Validity, Construction, and Application of State Statutes Prohibiting, Limiting, or Regulating Fishing or Hunting in State by Nonresidents. 31 A.L.R.6th 523.

15-42-108. Nonresident three-day fishing license.

RESEARCH REFERENCES

ALR. Validity, Construction, and Application of State Statutes Prohibiting, Limiting, or Regulating Fishing or Hunting in State by Nonresidents. 31 A.L.R.6th 523.

15-42-122. Limitation on issuance of hunting or fishing licenses in neighboring states.

RESEARCH REFERENCES

ALR. Validity, Construction, and Application of State Statutes Prohibiting, Limiting, or Regulating Fishing or Hunting in State by Nonresidents. 31 A.L.R.6th 523.

15-42-126. Reciprocity agreements — Nonresidents over 65.

RESEARCH REFERENCES

ALR. Validity, Construction, and Application of State Statutes Prohibiting, Limiting, or Regulating Fishing or Hunting in State by Nonresidents. 31 A.L.R.6th 523.

CHAPTER 47

WILDLIFE RECREATION FACILITIES

SUBCHAPTER.

1. WILDLIFE RECREATION FACILITIES PILOT PROGRAM.

SUBCHAPTER 1 — WILDLIFE RECREATION FACILITIES PILOT PROGRAM

SECTION.

15-47-104. Funding.

15-47-104. Funding.

(a)(1) The Arkansas State Game and Fish Commission voluntarily agrees to make available an amount not to exceed five hundred thousand dollars (\$500,000) for the fiscal year beginning July 1, 2011, and ending June 30, 2012, for the Wildlife Recreation Facilities Pilot Program for the development of wildlife recreation facilities under this

subchapter from moneys that the commission has received from oil and gas leases in the Fayetteville Shale.

(2) The General Assembly recognizes that the agreement under subdivision (a)(1) of this section does not constitute:

(A) A mandate by the General Assembly;

(B) An appropriation of funds by the General Assembly; or

(C) A waiver or relinquishment by the commission of the authority vested in the commission under Arkansas Constitution, Amendment 35.

(3) Before any moneys are distributed under this section, the commission shall retain the right to approve or disapprove the release of moneys.

(4) Future funding for the program is subject to the review under subdivisions (b)(2) and (3) of this section and shall be determined by and distributed from the availability of royalties from oil and gas leases in the Fayetteville Shale that the commission receives or from other sources that are not from the commission.

(b)(1) The Department of Rural Services and the commission agree to execute a memorandum of understanding to delineate each party's participation, obligation, and cooperation in the program sufficient to fulfill the requirements of this section.

(2) The department and the commission agree to review the memorandum of understanding every two (2) years to evaluate the effectiveness and success of the program and to reexamine the need for moneys to be made available to the department to fund the development of wildlife recreation facilities.

(3) If both the commission and the department agree that the program meets or exceeds the purpose of the legislation or agree that to discontinue the program would result in an undue disruption of progress, the parties shall reexecute a memorandum of understanding under subdivision (b)(1) of this section.

(c) An agreement for funding in a memorandum of understanding under subdivision (b)(1) of this section and a distribution of money under this subchapter require the final approval of the commission.

(d) The maximum grant amount for a single project funded under the program is one hundred thousand dollars (\$100,000) per year.

History. Acts 2009, No. 687, § 1; 2011, No. 1041, § 7.

Amendments. The 2011 amendment, in (a)(1), substituted "an amount not to exceed five hundred thousand dollars

(\$500,000)" for "one million dollars (\$1,000,000)," "fiscal year" for "fiscal bien-nium," "July 1, 2011" for "July 1, 2009," and "June 30, 2012" for "June 30, 2011."

SUBTITLE 5. MINERAL RESOURCES GENERALLY**CHAPTER 57****MINING AND RECLAMATION GENERALLY**

SUBCHAPTER.

3. ARKANSAS OPEN-CUT LAND RECLAMATION ACT.**SUBCHAPTER 3 — ARKANSAS OPEN-CUT LAND RECLAMATION ACT**

SECTION.

15-57-305. Civil and administrative penalties.

15-57-305. Civil and administrative penalties.

(a) **CIVIL PENALTIES.** The Arkansas Department of Environmental Quality is authorized to institute a civil action in any court of competent jurisdiction to accomplish any or all of the following:

(1) To restrain any violation of or to compel compliance with the provisions of this subchapter or of any order, rule, regulation, permit, or reclamation plan issued pursuant thereto;

(2) To accomplish remedial measures as may be necessary or appropriate to implement or effectuate the purposes and intent of this subchapter, including the reclamation of affected land;

(3) To recover all costs, expenses, and damages to the department or any other agency of the state in enforcing the provisions of this subchapter and reclaiming affected land;

(4) To assess civil penalties for violations of this subchapter or of any order, rule, regulation, permit, or reclamation plan issued pursuant thereto in an amount not to exceed:

(A) One thousand dollars (\$1,000) for the first violation;

(B) Two thousand five hundred dollars (\$2,500) for a second separate violation of the same offense within two (2) years; and

(C) Five thousand dollars (\$5,000) for a third separate or subsequent violation of the same offense within two (2) years;

(5) To recover civil penalties assessed pursuant to subsections (b) and (c) of this section; or

(6) To forfeit a reclamation bond.

(b) **ADMINISTRATIVE PENALTIES.**

(1) Any person who engages in open-cut mining without first securing a permit as required by this subchapter or who fails to reclaim affected lands in accordance with this subchapter or who violates any provision of this or any order, regulation, rule, permit, or reclamation plan issued pursuant thereto, may be assessed an administrative civil penalty by the department not to exceed:

(A) One thousand dollars (\$1,000) for the first violation;

(B) Two thousand five hundred dollars (\$2,500) for a second separate violation of the same offense within two (2) years; and

(C) Five thousand dollars (\$5,000) for a third separate or subsequent violation of the same offense within two (2) years.

(2) No administrative civil penalty may be assessed until the person charged with the violation has been given the opportunity for a hearing and has exhausted all administrative appellate remedies.

(3) The amount of the administrative civil penalty shall be determined in accordance with regulations adopted by the Arkansas Pollution Control and Ecology Commission, including, but not limited to, the regulations on civil penalties.

(c) All hearings and appeals arising under this subchapter shall be conducted in accordance with the procedures described in §§ 8-4-218 — 8-4-229 and in accordance with regulations adopted by the commission, including, but not limited to, the regulations on administrative procedures.

(d) As an alternative to the limits on civil or administrative penalties under subsection (a) or subsection (b) of this section, if a person who is found liable in an action brought under subsection (a) or subsection (b) of this section has derived pecuniary gain from the commission of mining without a permit or mining outside of the area authorized in the permit, then the person may be ordered to pay a civil penalty equal to the amount of the pecuniary gain.

History. Acts 1991, No. 827, § 4; 1999, No. 1526, § 3; 2001, No. 550, § 1; 2011, No. 609, § 1. **Amendments.** The 2011 amendment added (d).

CHAPTER 58

THE ARKANSAS SURFACE COAL MINING AND RECLAMATION ACT

SUBCHAPTER.

1. GENERAL PROVISIONS.
2. ADMINISTRATION.
4. STATE ABANDONED MINE RECLAMATION PROGRAM.

SUBCHAPTER 1 — GENERAL PROVISIONS

SECTION.

- 15-58-102. Legislative findings.
15-58-106. Exempt activities.

15-58-102. Legislative findings.

The General Assembly of the State of Arkansas finds, and it is declared that:

(1)(A) The extraction of coal from the earth by surface mining in this state is a significant economic activity, is an integral part of the growth and development of this state, and is important to supply energy to the people of this state.

(B) It is, therefore, essential to the people of this state to ensure the existence of an expanding and economically healthy surface and underground coal mining industry;

(2) The process of surface coal mining must be accomplished in a manner to reduce so far as practicable the adverse social, economic, and environmental effects of surface mining and to protect the general welfare, health, safety, and property rights of the people of this state;

(3) Because surface coal mining in this state takes place in areas where the terrain, climate, biological, chemical, and other physical conditions are peculiar to this state and because the Arkansas Department of Environmental Quality is familiar with these conditions, the department has the primary responsibility to develop, issue, and enforce regulations for surface mining and reclamation operations in this state pursuant to this chapter and in compliance with applicable federal laws and regulations;

(4)(A) The Congress of the United States has enacted the Surface Mining Control and Reclamation Act of 1977, Pub. L. No. 95-87, which provides for the establishment of a nationwide program to regulate surface coal mining and reclamation and which vests exclusive authority in the United States Department of the Interior over the regulation of surface coal mining and reclamation within the United States. Section 503 of the Surface Mining Control and Reclamation Act of 1977, Pub. L. No. 95-87, provides that each state may assume and retain exclusive jurisdiction over the regulation of surface coal mining and reclamation operations within the state by obtaining approval of a state program of regulation that demonstrates that the state has the capability of carrying out the provisions and meeting the purposes of the Surface Mining Control and Reclamation Act of 1977, Pub. L. No. 95-87.

(B) Section 503 of the Surface Mining Control and Reclamation Act of 1977, Pub. L. No. 95-87, further provides that a state wishing to assume exclusive jurisdiction over the regulation of surface coal mining and reclamation operations within the state must have a state law which provides for the regulation of surface coal mining and reclamation operations in accordance with the requirements of the Surface Mining Control and Reclamation Act of 1977, Pub. L. No. 95-87; and

(5)(A) The Congress of the United States has enacted the Surface Mining Control and Reclamation Act of 1977, Pub. L. No. 95-87, which provides for the establishment of a nationwide program to promote reclamation of mined areas in the country left without adequate reclamation to be funded by a reclamation fee paid by all surface coal mining operators. Section 402 of the Surface Mining Control and Reclamation Act of 1977, Pub. L. No. 95-87, provides that each state may develop a state abandoned mine reclamation program to enable the state to develop and carry out projects for the reclamation of abandoned mines within the state.

(B) The Secretary of the Interior will allocate funds to this state under the Surface Mining Control and Reclamation Act of 1977, Pub.

L. No. 95-87, for the purpose of operating the state abandoned mine reclamation program.

(C) Section 405 of the Surface Mining Control and Reclamation Act of 1977, Pub. L. No. 95-87, provides that, prior to approval of the state abandoned mine reclamation plan, the state must have adopted state legislation necessary to carry out the purposes of the Surface Mining Control and Reclamation Act of 1977, Pub. L. No. 95-87.

History. Acts 1979, No. 134, § 2; A.S.A. 1947, § 52-936; Acts 1999, No. 1164, § 142; 2011, No. 279, § 1.

subdivided (1) and (4); subdivided (5) as (5)(A) and (C) and inserted (5)(B); and deleted the last sentence in (5)(A).

Amendments. The 2011 amendment

15-58-106. Exempt activities.

This chapter does not apply to any of the following activities:

(1)(A) The mining, surface or otherwise, of any minerals or materials other than coal.

(B) All minerals and materials other than coal, when applicable, shall be regulated according to the Arkansas Open-Cut Land Reclamation Act of 1977 (repealed) or the Arkansas Quarry Operation, Reclamation, and Safe Closure Act, § 15-57-401 et seq.;

(2) The extraction of coal by a landowner for his or her own noncommercial use from land owned or leased by him or her;

(3) The extraction of coal as an incidental part of federal, state, or local government-financed highway or other construction under regulations established by the Arkansas Pollution Control and Ecology Commission; or

(4) The extraction of coal incidental to the extraction of other minerals where coal does not exceed sixteen and two-thirds percent (16 $\frac{2}{3}$ %) of the tonnage of minerals removed for purposes of commercial use or sale or for coal exploration.

History. Acts 1979, No. 134, § 34; A.S.A. 1947, § 52-968; Acts 2011, No. 279, § 2.

subdivided (1) as (1)(A) and (B); and added "or the Arkansas Quarry Operation, Reclamation, and Safe Closure Act, § 15-57-401 et seq." in (1)(B).

Amendments. The 2011 amendment

SUBCHAPTER 2 — ADMINISTRATION

SECTION.

15-58-204. Adoption of rules and regulations.

SECTION.

15-58-207. Public hearing — Procedures.
15-58-208. Public hearing — Examiners.

15-58-204. Adoption of rules and regulations.

(a) Before the adoption, amendment, or repeal of any rule or regulation, the Arkansas Pollution Control and Ecology Commission shall give public notice and the opportunity for a public hearing under §§ 15-58-207 and 15-58-208.

(b)(1) If the commission finds that imminent peril to the public health, safety, or welfare requires adoption of a rule upon fewer than twenty (20) days' notice and states in writing its reasons for that finding, it may proceed without prior notice or hearing, or upon any abbreviated notice and hearing that it may choose, to adopt an emergency rule or regulation.

(2) The rule or regulation may be effective for no longer than one hundred eighty (180) days.

(c)(1) A person has the right to petition for the issuance, amendment, or repeal of any rule or regulation.

(2) Within ninety (90) days after submission of a petition, the commission either shall deny the petition, stating in writing its reasons for the denial, or shall initiate rulemaking proceedings in accordance with subsection (a) of this section.

(d)(1) The commission shall file with the Secretary of State a certified copy of each rule or regulation adopted by it.

(2) The Secretary of State shall keep a permanent register of the rule or regulation open to public inspection.

(3)(A) Each rule or regulation shall be effective twenty (20) days after filing, unless a later date is specified by law or in the rule or regulation itself.

(B) However, an emergency rule or regulation may become effective immediately upon filing or at a stated time less than twenty (20) days after filing if the commission finds that this effective date is necessary because of imminent peril to the public health, safety, or welfare.

(C) The commission's finding and a brief statement of the reasons shall be filed with the rule or regulation.

(D) The commission shall take appropriate measures to make emergency rules or regulations known to the persons who may be affected by them.

(e) A rule or regulation shall not be valid unless adopted and filed in substantial compliance with this chapter.

History. Acts 1979, No. 134, § 27; A.S.A. 1947, § 52-961; Acts 2011, No. 279, § 3.

Amendments. The 2011 amendment deleted "legislative" preceding "public hearing" in (a); subdivided (b) as (b)(1) and (2); substituted "one hundred eighty (180) days" for "one hundred twenty (120)

days" in (b)(2); subdivided (c) as (c)(1) and (2); substituted "the commission" for "the agency" in (c)(2); subdivided (d) as (d)(1) through (d)(3); deleted "the Governor and" following "shall file with" in (d)(1); and substituted "commission" for "agency" or variant in (d)(3)(B) through (d)(3)(D).

15-58-207. Public hearing — Procedures.

(a) The Director of the Arkansas Department of Environmental Quality or the Arkansas Pollution Control and Ecology Commission shall give public notice of each of the following pending, proposed, or requested actions:

(1) The director, upon receipt of any completed application for an initial or revised permit or renewal under §§ 15-58-502 — 15-58-508;

(2) The director, upon receipt of any request by an operator for a variance or amendment to an issued permit under §§ 15-58-502 — 15-58-508;

(3) The commission, upon receipt of any proposal for the designation of lands as unsuitable for surface mining under § 15-58-501;

(4) The commission, upon receipt of any proposal for the use of land acquired pursuant to the state abandoned mine reclamation program; or

(5) The commission, in any rulemaking proceeding under § 15-58-204.

(b) Notice shall be circulated in accordance with the regulations issued by the commission to inform interested and potentially interested persons of the pending action.

(c)(1) Interested persons shall be afforded a period of not less than thirty (30) days after the last publication of the above notice to submit written objections or comments.

(2) Comments and objections shall be immediately transmitted to the applicant or permittee and shall be made available to the public.

(3) If a public hearing is requested by an interested person on or before ten (10) days of receipt of the objections and in accordance with the regulations issued by the commission, public notice shall be given in accordance with the regulations issued by the commission.

(4) A public hearing shall be held for the purpose of receiving relevant evidence.

(d) Any person shall be permitted to submit oral or written statements concerning the subject matter of the public hearing, to call witnesses who may present oral statements, and to present recommendations as to an appropriate decision.

(e)(1) An electronic or stenographic record shall be made of the hearing, unless waived by all parties.

(2) All written statements and similar data offered in evidence, subject to exclusion by the examiner for reasons of redundancy, shall be received in evidence and shall constitute part of the record.

(f) If a public hearing is held under this section, the director or the commission shall grant or deny, in whole or in part, the requested or proposed action and shall give public notice of its decision within sixty (60) days of the hearing.

(g)(1) If there has been no public hearing held pursuant to this section, the director or the commission shall grant or deny, in whole or in part, the requested or proposed action within a reasonable time and in accordance with regulations issued by the commission.

(2) Parties shall be notified by mail with a copy of the decision.

(3) Public notice shall be given of the decision in accordance with the regulations issued by the commission.

(h) Within thirty (30) days of the public notice of the final decision of the director or the commission, any person with an interest which is or

may be adversely affected may request review of the reasons for the final determination of the director or the commission in accordance with this chapter.

History. Acts 1979, No. 134, § 28; A.S.A. 1947, § 52-962; Acts 2011, No. 279, § 4. for “legislative” in (c)(3), (c)(4), (f) and (g)(1); subdivided former (c) as (c)(1) through (c)(4); subdivided former (e) as (e)(1) and (2); substituted “hearing” for “conference” in (f); and subdivided former (g) as (g)(1) through (3).

15-58-208. Public hearing — Examiners.

- (a) For the purpose of receiving and responding to written comments and objections and for presiding at a public hearing, the Arkansas Pollution Control and Ecology Commission or the Director of the Arkansas Department of Environmental Quality may designate one (1) or more examiners.
- (b) An examiner may:
 - (1)(A) Set the time and location of the public hearing.
 - (B) Public notice of the information shall be circulated in accordance with regulations issued by the commission;
 - (2) Receive all information submitted pursuant to the pending action and permit or deny cross-examination of witnesses;
 - (3) Recommend denial or approval, in whole or in part, of the proposed or requested action;
 - (4) Maintain order at the public hearing;
 - (5) Generally guide the course of the public hearing; and
 - (6) Arrange with the applicant, upon request of any party, access to the mining area for the purpose of gathering information relevant to the proceeding.

History. Acts 1979, No. 134, § 28; A.S.A. 1947, § 52-962; Acts 2011, No. 279, § 5. substituted “Public” for “Legislative” in the section heading; deleted “legislative” preceding “public hearing” in (a); and subdivided (b)(1).

Amendments. The 2011 amendment

SUBCHAPTER 4 — STATE ABANDONED MINE RECLAMATION PROGRAM

SECTION.
 15-58-402. State priorities.
 15-58-404. Abatement of adverse effects
 — Lien.

15-58-402. State priorities.

Expenditure of moneys from the fund on lands and water eligible under § 15-58-401 for the purposes of this chapter shall reflect the following priorities in the order stated:

(1) “Priority I” includes the protection of public health, safety, and property from extreme danger of adverse effects of coal mining prac-

tices, including the restoration of land and water resources and the environment that:

(A) Have been degraded by the adverse effects of coal mining practices; and

(B) Are adjacent to a site that has been or will be addressed to protect public health, safety, and property from extreme danger of adverse effects of coal mining practices;

(2) "Priority II" includes the protection of public health and safety from adverse effects of coal mining practices, including restoration of land and water resources and the environment that:

(A) Have been degraded by the adverse effects of coal mining practices; and

(B) Are adjacent to a site that has been or will be addressed to protect the public health and safety from the adverse effects of coal mining practices; and

(3)(A) "Priority III" includes the restoration of land and water resources and the environment previously degraded by adverse effects of coal mining practices, including measures for the conservation and development of soil, water, excluding channelization, woodland, fish and wildlife, recreational resources, and agricultural productivity.

(B) Priority III land and water resources that are geographically contiguous with existing or remediated Priority I or Priority II problems shall be considered adjacent under the definitions of Priority I or Priority II above.

(C) If the state receives any funding under 30 CFR § 872.14, 30 CFR § 872.17, or 30 CFR § 872.21, then the state may expend these funds to reclaim Priority III lands and waters if either of the following conditions applies:

(i) Facilitating the Priority I or Priority II reclamation; or

(ii) Providing reasonable savings towards the objective of reclaiming all Priority III land and water problems within the state's jurisdiction.

History. Acts 1979, No. 134, § 7; A.S.A. 1947, § 52-941; Acts 2011, No. 279, § 6.

Amendments. The 2011 amendment rewrote the section.

15-58-404. Abatement of adverse effects — Lien.

(a) The Director of the Arkansas Department of Environmental Quality or his or her authorized representative, under the state abandoned mine reclamation program, shall make a finding of fact that:

(1) Land or water resources have been adversely affected by past coal mining practices; and

(2) The adverse effects are at a state in which, in the public interest, action to restore, reclaim, abate, control, or prevent should be taken; and

(3)(A) The owners of the land or water resources where entry must be made to restore, reclaim, abate, control, or prevent the adverse

effects of past coal mining practices are not known or readily available; or

(B) The owners will not give permission for the state or political subdivisions of the state or their agents, employees, or contractors to enter upon the property to restore, reclaim, abate, control, or prevent the adverse effects of past coal mining practices.

(b)(1) If the director determines that the conditions listed in subsection (a) of this section exist, the director or his or her authorized representative upon giving notice by mail to the owners, if known, or if not known, by posting notice upon the premises and advertising one (1) time in a newspaper of general circulation in the county in which the land lies, may enter upon the property adversely affected by past coal mining practice and any other property to have access to the property to do all things necessary or expedient to restore, reclaim, abate, control, or prevent adverse effects.

(2) The entry shall be construed as an exercise of the police power for the protection of public health, safety, and general welfare and shall not be construed as an act of condemnation of property nor of trespass thereon.

(3)(A) The moneys expended for the work and the benefits accruing to any premises so entered upon shall be chargeable against the land and shall mitigate or offset any claim in or any action brought by any owner of any interest in the premises for any alleged damages by virtue of the entry.

(B) Subdivision (b)(3)(A) of this section does not create a new right of action or eliminate existing immunities.

(c)(1) A lien exists against the property so reclaimed under this section if the moneys expended for reclamation result in a significant increase in property value.

(2)(A) The lien under subdivision (c)(1) of this section is effective upon the filing by the director of a notice of lien with the circuit clerk of the county in which the land is located and in accordance with the regulations issued by the Arkansas Pollution Control and Ecology Commission.

(B) However, the notice shall constitute a lien upon the land as of the date of the expenditure of the moneys and shall have priority as a lien second only to the lien of real estate taxes imposed upon the land.

(d)(1) The lien obtained under this section shall not exceed the amount determined by an independent appraisal to be the increase in the market value of the land as a result of the reclamation undertaken.

(2) The commission by regulations shall establish procedures for determining the amount of the lien.

(3) The landowner or any parties aggrieved by the decision determining the amount of the lien may request an adjudicatory hearing before the commission under §§ 15-58-209 — 15-58-211.

(e) No lien shall be filed against the property of any person, in accordance with this subsection, who owned the surface prior to May 2,

1977, and who neither consented to, participated in, nor exercised control over the mining operation which necessitated the reclamation performed hereunder.

History. Acts 1979, No. 134, § 9; A.S.A. 1947, § 52-943; Acts 2011, No. 279, § 7.

A.C.R.C. Notes. Acts 2011, No. 279, § 7 omitted the previous subsection (d) — the omission was apparently inadvertent. The previous subsection (d) has been set out as subsection (e).

Amendments. The 2011 amendment,

subdivided and redesignated the section; added “If the director determines that the conditions listed in subsection (a) of this section exist” in (b)(1); inserted “under this section” in (c)(1); and inserted “under subdivision (c)(1) of this section” in (c)(2)(A).

SUBTITLE 6. OIL, GAS, AND BRINE

CHAPTER 71

OIL AND GAS COMMISSION

A.C.R.C. Notes. Acts 2011, No. 939, § 7, provided: “FAYETTEVILLE SHALE QUARTERLY REPORTING. The Arkansas Oil and Gas Commission shall report on a quarterly basis to the Arkansas Legislative Council or the Joint Budget Committee the number of inspections and any hearings, findings, orders, fines, or other agency regulatory or enforcement actions

or activities involving the Fayetteville Shale. The quarterly reports shall be provided no later than the 15th day of the month immediately following the end of each quarter.

“The provisions of this section shall be in effect only from July 1, 2011 through June 30, 2012.”

15-71-115. Abandoned and Orphaned Well Plugging Fund.

A.C.R.C. Notes. Acts 2010, No. 53, § 6, provided: “FUND TRANSFER. The Oil and Gas Commission, after receiving review from the Chief Fiscal Officer of the State and the Legislative Council, may request the Chief Fiscal Officer to transfer

up to \$750,000 per year on his or her books and the books of the State Treasurer and the Auditor of the State from the Oil and Gas Commission Fund to the Abandoned and Orphan Well Plugging Fund.”

CHAPTER 73

OIL AND GAS LEASES AND LEASE INTERESTS

SUBCHAPTER

2. LEASES GENERALLY.

SUBCHAPTER 2 — LEASES GENERALLY

SECTION.

15-73-201. Lease extended by production
— Scope.

15-73-201. Lease extended by production — Scope.

(a)(1) The term of an oil and gas, or oil or gas, lease extended by activities on lands in one (1) section or pooling unit, whether established by rule or by order of the Oil and Gas Commission or the lease, shall not be extended to sections or pooling units under the lease where there has been no activity.

(2) Subsection (a) of this section does not prevent the parties to the lease from agreeing to a continuous drilling provision in order to extend the lease term to additional lands drilled or included in another section or unit if the lessor's waiver of the right to terminate the lease to the additional lands, sections, or units where no activity has occurred before the expiration of the lease is fully set forth in the lease or another agreement in bold, enlarged, or other distinctive print.

(b) After the primary term of a lease in an uncontrolled oil field with no spacing requirements, a producing well shall contain a maximum of one (1) governmental quarter-quarter section as a production unit.

History. Acts 1983, No. 330, §§ 1-3; A.S.A. 1947, §§ 53-321 — 53-323; Acts 2011, No. 857, § 1.

Amendments. The 2011 amendment rewrote the section.

CASE NOTES**In General.**

Pursuant to subsection (b) of this section, as a lessee commenced drilling operations on the leased premises within a year of the expiration of the primary term, subsection (a) of this section did not apply to sever the producing section from non-

producing units; therefore, the lessors' request to nullify the lease was properly denied. *Snowden v. JRE Invs.*, 2010 Ark. 276, — S.W.3d — (2010).

Cited: *Southwestern Energy Prod. Co. v. Elkins*, 2010 Ark. 481, — S.W.3d — (2010).

15-73-204. Notice to lessee to release forfeited lease — Damages for failure to release.**CASE NOTES****Equitable Relief.**

As lessors suit the lessee, alleging it violated § 5-37-226 and this section, and attacking the validity of the lease, they could not thereafter complain that the lessee failed to fulfill its lease obligations.

Therefore, the lessee's was entitled to equitable relief by being allowed to suspend its drilling obligations while the suit was pending. *Snowden v. JRE Invs.*, 2010 Ark. 276, — S.W.3d — (2010).

CHAPTER 76**BRINE**

SUBCHAPTER.

3. BRINE PRODUCTION.**SUBCHAPTER 3 — BRINE PRODUCTION**

SECTION.

15-76-315. Valuation of brine.**15-76-306. Authority of the commission.****CASE NOTES****Construction.**

Reading the Brine Production Act, § 15-76-301 et seq., with the Administrative Procedures Act, § 25-15-212(g), it appeared that the correct procedure for the circuit court to follow was to limit its review to the record and allow the parties to introduce evidence only for the purpose of showing the Arkansas Oil and Gas Commission's order was invalid or unrea-

sonable; the Brine Production Act does not allow a de novo review of orders issued by the Commission, but permits additional evidence relating to procedural irregularities before the Commission or where there was good reason for failure to present that evidence to the Commission. *Great Lakes Chem. Corp. v. Bruner*, 368 Ark. 74, 243 S.W.3d 285 (2006).

15-76-315. Valuation of brine.

(a)(1)(A) The value of brine during any given year with respect to any unit established hereunder and for all purposes hereof shall be deemed to be the average price at which the operator of the unit has purchased or sold brine in Arkansas adjusted to reflect concentrations of ions, temperature, other relevant physical and chemical specifications, and delivery point.

(B) However, for purposes of this subchapter, the value shall not apply to any unit created hereunder until there shall have been actual bona fide sales or purchases of brine by the operator in sufficient volumes and under such circumstances as would establish a bona fide market value for brine from that unit.

(2) In any action by any owner against the operator of the unit for an appropriate accounting for royalty, the burden of proof that the value as determined hereunder constitutes a fair and reasonable market value of brine produced from the unit shall be upon the operator of the unit.

(3) However, no valuation of brine or any other alternate method of computing royalty or in lieu of royalty shall ever result in compensation which is less than thirty-two dollars (\$32.00) per acre per year, as increased or decreased annually based on changes in the Producer Price Index for Intermediate Materials, Supplies and Components published by the United States Department of Labor, Bureau of Labor Statistics, or its successor.

(4)(A) The adjustment will be made effective as of June 1 of each year and will remain effective for payments made from June 1 of that year until May 31 of the following year.

(B) The adjustment made each year will be based on the change in the index from December of the previous year relative to the base index of March, 1995.

(C) The formula to make the adjustment is as follows:

New in-lieu royalty payment = Base in-lieu royalty payment multiplied times A divided by B

Where:

(i) Base in-lieu royalty payment = \$32.00 per acre;

(ii) A = Index for the month of December prior to the year the adjustment is made. The index is the Producer Price Index for Intermediate Materials, Supplies and Components as published by the United States Department of Labor, Bureau of Labor Statistics, in Producer Price Indexes Table 2 for selected commodity groupings;

(iii) B = The March, 1995, Producer Price Index for Intermediate Materials, Supplies and Components as published by the United States Department of Labor, Bureau of Labor Statistics, in Producer Price Indexes Table 2 for selected commodity groupings.

(D)(i) The base price in lieu of royalty payment of thirty-two dollars (\$32.00) per acre will remain effective from April 1, 1995, until May 31, 1996.

(ii) The first adjustment to the base payment will be made effective as of June 1, 1996, and will remain effective for the following year until May 31, 1997.

(iii) Successive adjustments will be made effective as of June 1 each year thereafter and shall remain in effect until May 31 of the following year.

(b)(1) In the event that, during a given year, an operator makes no sales or purchases of brine qualifying for use under subsection (a) of this section, the value of brine for that year for brine produced by the operator from a particular unit for all purposes hereof shall be determined by the Oil and Gas Commission by multiplying the number of acres in that particular unit by eight (8) times the weighted average of lease compensation per acre or other in lieu of royalty payment agreed to between the producer thereof and the owners of brine interests in that unit, divided by the total production of brine in barrels for the given year.

(2)(A) If there are no sales or purchases of brine for two (2) or more consecutive years, the value of brine for each consecutive year after the first year in which there are no such sales shall be the value initially determined above, increased or decreased annually using the Producer Price Index for Intermediate Materials, Supplies and Components published by the United States Department of Labor, Bureau of Labor Statistics, in Producer Price Indexes Table 2 for selected commodity groupings.

(B) The adjustment will be made prior to June 1 and the new price per acre will be effective on June 1 of each year using the value of the

index for the previous December based on the change in the index from March, 1995, to the previous December.

(C) The formula to make the adjustment is as set forth in subdivision (a)(4)(C) of this section.

(3) For purposes of calculating the value of the royalty interest under § 15-76-314(e), the value of brine as initially determined and as increased or decreased under this subsection shall not be less than the value of brine as initially determined under this subsection by utilizing an average annual lease compensation or payment in lieu of royalty equivalent to thirty-two dollars (\$32.00) per acre.

(c)(1) In addition to any other amounts due and owing by the producer or producers of any unit to the owners therein, the producer or producers shall account separately and on a fair and equitable basis to each owner in the unit for all substances which are found by the commission to be profitably extracted from brine by a producer and which were not extracted by a producer on January 1, 1979.

(2) Whether or not any such substance is extracted profitably shall be determined by the Oil and Gas Commission on the basis of the value at the time of extraction, without interest, after deducting all costs of producing and recovering the same.

(3)(A) Except as provided in subdivision (c)(3)(B) of this section, the accounting by the producer shall be on a quarterly basis and shall be accompanied by payments due to royalty owners. The producer's responsibility for making royalty payments shall commence upon the occurrence of either of the two (2) following events:

- (i) The date of filing of a petition for an accounting; or
- (ii) The time of the profitable extraction of other substances.

(B) The accounting and corresponding royalty payments may be made on an annual basis for the aggregate of up to four (4) quarters of accumulated royalties if the aggregate amount owed to a royalty owner is one hundred dollars (\$100) or less.

History. Acts 1979, No. 937, § 8; A.S.A. 1947, § 53-1308; Acts 1995, No. 1287, § 1; 2011, No. 169, § 1.

Amendments. The 2011 amendment rewrote (c)(3).

